

## LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

---

for April 28, 2004 PLANNING COMMISSION MEETING

**P.A.S.:** Change of Zone #04025

**PROPOSAL:** Revise language in the LMC §27.71.120 for temporary concrete paving plants.

**CONCLUSION:** The proposed changes to LMC §27.71.120 allow for a more flexible and cost effective process for locating temporary concrete paving plants for city arterial street paving projects.

<b><u>RECOMMENDATION:</u></b>
-------------------------------

<b>Approval</b>
-----------------

### **GENERAL INFORMATION:**

#### **HISTORY:**

May 6,  
1999      The change of zone # 3164 allowed temporary concrete batch plants for paving streets in new subdivisions.

July 14,  
1997      The City Council approved Change of Zone # 3054 which created section 27.71.120 (b) that permits temporary paving plants with specific restrictions. The purpose of the change was to make the City Zoning Ordinance consistent with the Lancaster County Zoning Regulations, to allow highway contractors, who have contracts to pave state and county roads to operate within the three-mile jurisdiction of Lincoln the same as beyond the City's jurisdiction.

October 12  
1981      The City Council approved Change of Zone # 1894 to allow security fences around construction sites.

For more than 30 years the Lancaster County Zoning Resolution has permitted temporary buildings and uses that are used in conjunction with construction.

**ANALYSIS:**

1. The purpose is to permit temporary concrete paving plants for arterial streets inside the city. This does not include temporary asphalt batch plants for city arterial streets.
2. The proposed wording is similar to the existing wording for temporary concrete batch plants which are permitted for the construction of streets inside new subdivisions by administrative permit issued by the Planning Director.
3. Of the changes, one major proposed change to this area of the ordinance was the change that temporary concrete paving plants need not locate within the same section or within a mile of the project in which the plant is serving.
4. Another major change to this section is the removal of all language dealing with the violation of any part of the permit and thus revoking the permit by the Planning Director. In addition the changes removed all language dealing with the appeal procedures. The removal of this language is an attempt to “clean” this area of the ordinance up. It is assumed that if the applicant does not comply with the approved temporary permit then the permit can be revoked.
5. The Lincoln-Lancaster County Health Department recommends a 600 foot buffer between the boundaries of the property used for concrete paving plants and an occupied dwelling, from any school, church, library, early childhood care facility, hospital, motel, or park. This recommendation is based upon the potential for concrete paving plants to create an incompatible land-use situation relative to noise pollution. In addition any new proposed temporary plant shall meet city noise and air quality requirements.  
  
Language will be prepared by the time of the Planning Commission meeting to address the above mentioned comments and the comparison below will be updated.
6. Engineering Services has reviewed the proposed text amendment to allow temporary concrete paving plants to be allowed in the City limits to produce concrete for arterial street paving projects and has the following comments:
  - A. Engineering Services supports the concept of allowing the plants because of potential cost savings for arterial street paving projects and reduced truck traffic from permanent sites to project.
  - B. I suggest clarification of terms in the existing portion of the code and the suggested language. There appears to be conflicting language. 27.71.120 (b)(1) requires paving plants to be located outside City limits. I assume that paving plants includes both concrete or asphalt plants.
  - C. Section 27.71.120 (c)(2)(iii) addresses damage to unpaved roads. I suggest there is potential damage to paved streets especially if the paved street is a 27'

wide local residential street. The plant owner should pay for street damage whether paved or unpaved.

- D. 27.71.120 (c)(1)(viii) requires a \$5000 bond for clean up of the site after removal of the plant site. This may not be a large enough bond. Perhaps a larger bond should be required which will also include street repair along the identified travel routes.
- E. Site restoration should also include vegetation and potentially erosion and sediment control until the site is restabilized.

Language will be prepared by the time of the Planning Commission meeting to address the above mentioned comments and the comparison below will be updated.

A comparison with the existing wording for temporary concrete batch plants and the proposed working for temporary concrete paving plants:

(c) Temporary concrete ~~batch~~ paving plants. Temporary concrete ~~batch~~ paving plants are permitted in any zoning district by administrative permit issued by the Planning Director. The Planning Director shall not issue a permit or renew a permit without written approval by the Director of the Lincoln-Lancaster County Health Department and the Director of the Public Works and Utilities Department.

- (1) Applications for the administrative permit shall include:
  - (i) A site plan showing the entire limits of the permit area including the plant location, material storage areas, and the ingress/egress;
  - (ii) A dust control and suppression plan including the plant operations and haul roads to and from plant to project;
  - ~~(iii) A statement indicating the typical hours of operation. The plant may operate no more than fourteen hours per day, except on New Year Day, Memorial Day, the 4th of July, Labor Day, Thanksgiving Day, and Christmas when the operation shall not begin before noon;~~
  - ~~(iii)~~ (iv) A description or manufacturer's specification regarding particulate control equipment;
  - ~~(iv)~~ (v) A copy of a signed contract or other verification that the applicant is under contract to supply concrete for a city arterial street paving project ~~a project requiring at least 3,000 yards of concrete located within the same section or one mile of the permitted plant. The contract or other verification shall include the commencement and ending dates of the project. The Planning Director may increase the one-mile distance limit to no more than two miles if necessary to avoid routing trucks through local streets or inadequate county roads, or locations near occupied dwellings, schools, libraries, churches, or other noise or dust sensitive uses; and~~
  - (v) A noise control plan that will allow the operation to comply with Chapter 8.24 of the Lincoln Municipal Code.
  - (vi) A copy of a signed lease or other verification that the applicant has permission of the owner of the land upon which the plan shall be located to locate the plant thereon.
- (2) The administrative permit shall be issued under the following conditions:

(i) The plant site shall be approved by the City Engineer or if outside the city limits by the County Engineer and shall be located in the general vicinity of the specific arterial street paving project or projects and have access to a paved road;

(ii) The boundaries of the property used for the plant shall be located no closer than 300 feet from an occupied dwelling or from any school, church, library, early childhood care facility, hospital, motel, or park;

~~(i) The plant shall be located on premises in the same section or within one mile of the project identified on the application or as authorized under subparagraph (e)(1)(v) above;~~

~~(ii) The silo, batch plant, and aggregate storage shall be located no closer than 300 feet from an occupied dwelling or from any school, church, library, early childhood care facility, hospital, motel, or park;~~

(iii) The permittee shall require its suppliers to use only paved roads approved by the Director of Public Works or the County Engineer as the case may be, for the delivery of supplies to the concrete batch plant. The permittee shall further require that the drivers of concrete trucks leaving the plant also use said paved roads. EXCEPTION: The use of nonpaved roads may be approved on a case-by-case basis by the Director of Public Works or County Engineer. Additional bonding may be required to pay for repairs of damage to such nonpaved roads;

~~(iv) The plant shall be removed upon completion of the project identified in the application; or upon construction and occupancy resulting in a violation of subparagraph (e)(2)(ii) above. The permit site shall be cleaned up and restored to its pre-permit condition within thirty days following the completion of the project;~~

(v) All concrete produced by this plant shall be used to complete the project, except that the permittee may use the concrete product for sidewalks, driveways, foundations, parking lots, and other small concrete work to be performed by the permittee. ~~The concrete shall not be provided for concrete work to be performed by persons other than the permittee. The amount of concrete produced for small concrete work shall not exceed fifty percent of that produced for the project;~~

(vi) The plant shall be recalibrated to the satisfaction of the Public Works and Utilities Department prior to construction of any public improvement using concrete produced by this plant;

(vii) The anticipated set up and removal dates shall be identified on the application. Amendments to these dates must be requested to the Planning Director in writing;

(viii) The applicant shall submit a performance bond satisfactory to the City Attorney in the amount of \$5,000 to guarantee performance and clean up of the permit site.

(3) Permits issued pursuant to this section shall expire on ~~December 31 of each year or the completion date of the project as set forth in the permit application, whichever is earlier.~~ The Planning Director may extend the expiration date by an administrative amendment upon a showing that the project completion is delayed by weather or other causes beyond control of the permittee, or that the permittee has contracted for another project in conformance with subparagraph (a) above; ~~however, no extension of the expiration date may extend the permit beyond December 31 of the year of issuance. Renewal of a previously issued permit shall be by application in the same form as the original permit.~~

~~(4) The Planning Director may revoke the temporary permit for any one or more of the following violations:~~

~~\_\_\_\_\_ (i) Failure to operate the facility in accordance with the provisions of this section or with the approved application;~~  
~~\_\_\_\_\_ (ii) A violation of any city, county, state, or federal law;~~  
~~\_\_\_\_\_ (iii) Denial of access to the site to determine compliance with this section;~~  
~~\_\_\_\_\_ (iv) Unreasonable noise or disturbance to the surrounding neighborhood;~~  
~~\_\_\_\_\_ (5) The action of the Planning Director in approving, denying, refusing to renew or revoking a permit pursuant to this section may be appealed. Any aggrieved person may appeal the action of the Planning Director to the Planning Commission by filing notice of appeal with the Planning Director within fourteen days following the decision of the Planning Director. Final action by the Planning Commission may be appealed to the City Council by any aggrieved person by filing notice of appeal with the City Clerk within fourteen days following the action by the Planning Commission.~~

Prepared by:

Derek Miller, 441-6372, [dlmiller@ci.lincoln.ne.us](mailto:dlmiller@ci.lincoln.ne.us)  
Planner

**Date:** April 20, 2004

**Applicant:** Dobson Brothers Construction  
P.O. Box 81409  
Lincoln, Nebraska 68501  
(402) 474-5115  
**Contact:** Jack G. Wolf  
1248 O Street  
Lincoln, Nebraska 68508  
(402) 474-1507

F:\FILES\PLANNING\PC\CZ\04000\CZ04025.text.dlm.wpd

## ORDINANCE NO. \_\_\_\_\_

1           AN ORDINANCE amending Section 27.71.120 of the Lincoln Municipal Code  
2   to approve temporary concrete paving plants; and repealing Section 27.71.120 of the Lincoln  
3   Municipal Code as hitherto existing.

4           BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

5           Section 1. That Section 27.71.120 of the Lincoln Municipal Code be amended  
6   to read as follows:

7   **27.71.120 Temporary Buildings and Fences; Temporary Paving Plants; Temporary**  
8   **Concrete Batch Plants.**

9           (a) Temporary buildings that are used in conjunction with construction work only  
10   may be permitted in any district during the period that the building is being constructed, but  
11   such temporary building shall be removed upon completion of the construction work.  
12   Temporary fences used in conjunction with construction work only are permitted under the  
13   following conditions:

- 14           (1) Not to exceed ninety-six inches in height;
- 15           (2) Only permitted to protect construction work and materials;
- 16           (3) May be permitted on any part of a lot but not encompassing any greater area  
17   than necessary to provide protection to the construction work or materials and encompassing  
18   only that part of a lot necessary to allow construction activity and access around the structures;
- 19           (4) Shall be removed upon completion of the construction work or the  
20   availability of other protection within the lot. On lots or areas in which more than one

1 building will be under construction, the area enclosed by the fence shall be reduced as  
2 construction proceeds.

3 (5) Such temporary fence shall not obstruct the visibility of the construction site  
4 nor prevent access to the site by emergency vehicles.

5 (6) No fence shall be erected within that triangular area required for sight  
6 distance of vehicles entering or exiting the property or entering an adjacent intersection in  
7 conformance with the "design standards" and "guidelines and regulations for driveway design"  
8 of the city.

9 (b) Temporary paving plants used for the paving of federal or state highways or  
10 county roads are permitted in any zoning district during the project construction period under  
11 the following conditions:

12 (1) The plant shall be located outside the city limits on premises abutting the  
13 specific construction project and having access to a paved road.

14 (2) The boundaries of the property used for the plant shall be located no closer  
15 than 300 feet from an occupied dwelling or from any school, church, library, early childhood  
16 care facility, hospital, motel, or park.

17 (3) The permittee shall require its suppliers to use paved roads or other  
18 designated truck routes approved by the County Engineer for the delivery of supplies to the  
19 paving plant.

20 (4) Paving material prepared at the plant shall not be transported to any location  
21 other than the abutting project.

1 (5) The plant shall be removed upon substantial completion of the construction  
2 project.

3 (c) Temporary concrete paving plants. Temporary concrete paving plants are  
4 permitted in any zoning district by administrative permit issued by the Planning Director. The  
5 Planning Director shall not issue a permit or renew a permit without written approval by the  
6 Director of the Lincoln-Lancaster County Health Department and the Director of the Public  
7 Works and Utilities Department.

8 (1) Applications for an administrative permit shall include:

9 (i) A site plan showing the entire limits of the permit area including the  
10 plant location, material storage areas, and the ingress/egress:

11 (ii) A dust control and suppression plan including the plant operations and  
12 haul roads to and from plant to project;

13 (iii) A description or manufacturer's specification regarding particulate  
14 control equipment;

15 (iv) A copy of a signed contract or other verification that the applicant is  
16 under contract to supply concrete for a city arterial street paving project;

17 (v) A noise control plan that will allow the operation to comply with  
18 Chapter 8.24 of the Lincoln Municipal Code.

19 (vi) A copy of a signed lease or other verification that the applicant has  
20 permission of the owner of the land upon which the plant shall be located to locate the plant  
21 thereon.

22 (2) The administrative permit shall be issued under the following conditions:



1                   (ii) The plant site shall be approved by the City Engineer or if outside the  
2 city limits by the County Engineer and shall be located in the general vicinity of the specific  
3 arterial street paving project or projects and have access to a paved road;

4                   (ii) The boundaries of the property used for the plant shall be located no  
5 closer than 300 feet from an occupied dwelling or from any school, church, library, early  
6 childhood care facility, hospital, motel, or park;

7                   (iii) The permittee shall require its suppliers to use only paved roads  
8 approved by the Director of Public Works or the County Engineer as the case may be, for the  
9 delivery of supplies to the plant. The permittee shall further require that the drivers of concrete  
10 trucks leaving the plant also use said paved roads. EXCEPTION: The use of nonpaved roads  
11 may be approved on a case-by-case basis by the Director of Public Works or the County  
12 Engineer as the case may be. Additional bonding may be required to pay for repairs of  
13 damage to such nonpaved roads;

14                   (iv) The permit site shall be cleaned up and restored to its pre-permit  
15 condition within thirty days following the completion of the project;

16                   (v) All concrete produced by this plant shall be used to complete the  
17 project. The concrete shall not be provided for concrete work to be performed by persons  
18 other than the permittee;

19                   (vi) The plant shall be recalibrated to the satisfaction of the Public Works  
20 and Utilities Department prior to construction of any public improvement using concrete  
21 produced by this plant;

(vii) The anticipated set up and removal dates shall be identified on the application. Amendments to these dates must be requested to the Planning Director in writing;

(viii) The applicant shall submit a performance bond satisfactory to the City Attorney in the amount of \$5,000 to guarantee performance and clean up of the permit site.

(3) Permits issued pursuant to this section shall expire on the completion date of the project as set forth in the permit application. The Planning Director may extend the expiration date by administrative amendment upon a showing that the project completion is delayed or that the permittee has contracted for another project in conformance with subparagraph (a) above.

(c d) Temporary concrete batch plants. Temporary concrete batch plants are permitted in any zoning district by administrative permit issued by the Planning Director. The Planning Director shall not issue a permit or renew a permit without written approval by the Director of the Lincoln-Lancaster County Health Department.

(1) Applications for the administrative permit shall include:

(i) A site plan showing the entire limits of the permit area including the plant location, material storage areas, and the ingress/egress;

(ii) A dust control and suppression plan including the plant operations and haul roads to and from plant to project;

(iii) A statement indicating the typical hours of operation. The plant may operate no more than fourteen hours per day, except on New Year Day, Memorial Day, the 4th of July, Labor Day, Thanksgiving Day, and Christmas when the operation shall not begin before noon;

1 (iv) A description or manufacturer's specification regarding particulate  
2 control equipment;

3 (v) A copy of a signed contract or other verification that the applicant is  
4 under contract to supply concrete for a project requiring at least 3,000 yards of concrete  
5 located within the same section or one mile of the permitted plant. The contract or other  
6 verification shall include the commencement and ending dates of the project. The Planning  
7 Director may increase the one- mile distance limit to no more than two miles if necessary to  
8 avoid routing trucks through local streets or inadequate county roads, or locations near  
9 occupied dwellings, schools, libraries, churches, or other noise or dust sensitive uses; and

10 (vi) A noise control plan that will allow the operation to comply with  
11 Chapter 8.24 of the Lincoln Municipal Code.

12 (vii) A copy of a signed lease or other verification that the applicant has  
13 permission of the owner of the land upon which the plan shall be located to locate the plant  
14 thereon.

15 (2) The administrative permit shall be issued under the following conditions:

16 (i) The plant shall be located on premises in the same section or within  
17 one mile of the project identified on the application or as authorized under subparagraph  
18 (c)(1)(v) above;

19 (ii) The silo, batch plant, and aggregate storage shall be located no closer  
20 than 300 feet from an occupied dwelling or from any school, church, library, early childhood  
21 care facility, hospital, motel, or park;

1 (iii) The permittee shall require its suppliers to use only paved roads  
2 approved by the Director of Public Works or the County Engineer as the case may be, for the  
3 delivery of supplies to the concrete batch plant. The permittee shall further require that the  
4 drivers of concrete trucks leaving the plant also use said paved roads. EXCEPTION: The use  
5 of nonpaved roads may be approved on a case-by-case basis by the Director of Public Works  
6 or County Engineer. Additional bonding may be required to pay for repairs of damage to such  
7 nonpaved roads;

8 (iv) The plant shall be removed upon completion of the project identified  
9 in the application; or upon construction and occupancy resulting in a violation of  
10 subparagraph (c)(2)(ii) above. The permit site shall be cleaned up and restored to its pre-  
11 permit condition within thirty days following the completion of the project;

12 (v) All concrete produced by this plant shall be used to complete the  
13 project, except that the permittee may use the concrete product for sidewalks, driveways,  
14 foundations, parking lots, and other small concrete work to be performed by the permittee.  
15 The concrete shall not be provided for concrete work to be performed by persons other than  
16 the permittee. The amount of concrete produced for small concrete work shall not exceed fifty  
17 percent of that produced for the project;

18 (vi) The plant shall be recalibrated to the satisfaction of the Public Works  
19 and Utilities Department prior to construction of any public improvement using concrete  
20 produced by this plant;

21 (vii) The anticipated set up and removal dates shall be identified on the  
22 application. Amendments to these dates must be requested to the Planning Director in writing;

(viii) The applicant shall submit a performance bond satisfactory to the City Attorney in the amount of \$5,000 to guarantee performance and clean up of the permit site.

(3) Permits issued pursuant to this section shall expire on December 31 of each year or the completion date of the project as set forth in the permit application, whichever is earlier. The Planning Director may extend the expiration date by an administrative amendment upon a showing that the project completion is delayed by weather or other causes beyond control of the permittee, or that the permittee has contracted for another project in conformance with subparagraph (a) above; however, no extension of the expiration date may extend the permit beyond December 31 of the year of issuance. Renewal of a previously issued permit shall be by application in the same form as the original permit.

(4) The Planning Director may revoke the temporary permit for any one or more of the following violations:

(i) Failure to operate the facility in accordance with the provisions of this section or with the approved application;

(ii) A violation of any city, county, state, or federal law;

(iii) Denial of access to the site to determine compliance with this section;

(iv) Unreasonable noise or disturbance to the surrounding neighborhood;

(5) The action of the Planning Director in approving, denying, refusing to renew or revoking a permit pursuant to this section may be appealed. Any aggrieved person may appeal the action of the Planning Director to the Planning Commission by filing notice of appeal with the Planning Director within fourteen days following the decision of the Planning Director. Final action by the Planning Commission may be appealed to the City Council by

1 any aggrieved person by filing notice of appeal with the City Clerk within fourteen days  
2 following the action by the Planning Commission.

3 Section 2. That Section 27.71.120 of the Lincoln Municipal Code as hitherto  
4 existing be and the same is hereby repealed.

5 Section 3. That this ordinance shall take effect and be in force from and after its  
6 passage and publication according to law.

Introduced by:

\_\_\_\_\_

Approved as to Form & Legality:

\_\_\_\_\_  
City Attorney

Approved this \_\_\_ day of \_\_\_\_\_, 2004:

\_\_\_\_\_  
Mayor